

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. At the school they first interviewed two staff members to whom the girl had spoken. One of those staff members, a special educator, testified at the hearing (held on October 19, 1999). She testified that on October 30, 1991, the girl had

complained to her that she was having trouble urinating; and that when questioned by school staff if "someone touched you" the girl had stated that H. had touched her "privates" while she was at his house. The educator testified that the girl had then offered no further information.

3. The state trooper who investigated the incident also testified at the hearing. He stated that he made notes and filed a report after his interview, but that he did not tape record them or make contemporaneous notes of his questions and the subject's answers. He testified that he does not believe that his questions to the girl were leading.

4. The trooper stated that the girl told him that H. had touched her while she and her family were visiting H.'s family at H.'s house. He said she told him that H had pulled her pants down and touched her "privates" with his hand, that it had happened more than once, and that it had hurt.

5. An SRS investigator who accompanied the trooper at the interview with the girl testified that she could not recall whether her notes in the case were contemporaneously made or done after the fact. Her notes do not indicate the questions she and the trooper asked the girl or the exact responses the girl gave. Her recollection of the interview with the girl was essentially the same as the trooper's. She said the school

staff members who had reported the incident were also present. The only direct quote from the girl reflected in the investigator's notes of the interview is that she said H. "played with her".

6. The investigator testified that following the interview at the school she and the trooper went to the girl's house to interview the girl's mother. The investigator stated that the mother told them there had been an incident at H.'s house about two months earlier, and that she was "appropriately concerned" about it to extent that she and her children had not returned there since. The mother told the investigator that H.'s family lived in New Hampshire and was related to her husband at the time (from whom she is now divorced).

7. The investigator stated that the mother then took the girl to a doctor who had "confirmed abuse". However, SRS did not introduce any medical records relating to the alleged incident.

8. The investigator also testified that because the alleged incident had taken place in New Hampshire, the state police in that state were brought in to interview H. and his parents. Apparently, H.'s family had moved during this time to another address in New Hampshire. The investigator stated she

visited the girl and her mother again on December 13, 1991, and that the mother did not know H.'s family's new address.

9. The investigator testified that she accompanied a New Hampshire State trooper on December 17, 1991, when he interviewed the girl at her school. Again, the school staff members to whom the girl had reportedly originally told about the incident were present during the interview. According to the investigator the girl repeated her allegations, although no record of this interview exists either.

10. The investigator stated that she then waited several weeks to hear the results of the New Hampshire investigation. She never interviewed H. or his family, and there is no evidence that any charges were ever brought against H., or that there were any other legal consequences of the investigation in New Hampshire. Nonetheless, SRS determined that the allegations of the girl were substantiated, and it placed H.'s name in its child abuse "registry".

11. Even though it appears that H.'s address and whereabouts were fully known to the New Hampshire police during this time, SRS never attempted to ascertain H.'s address from them and never notified H. or his family of its decision.

12. H.'s parents learned of the SRS findings only recently when they moved to Vermont and applied for a family day care

home registration, which SRS denied because of the presence of H. in their household. That denial led to the instant appeal.¹

13. The alleged victim, who is now thirteen and in the seventh grade, came to the hearing and testified at the request of the petitioners. She stated that she has no memory of the incident or of being interviewed in connection with it.

14. The girl's mother also testified at the hearing. She stated that when SRS and the police came to her house in 1991 she had felt intimidated in that she feared SRS would take her daughter away if she did not cooperate in establishing the statements they said her daughter had made at school and if she did not agree to keep her daughter away from H. She testified that the incident that had taken place occurred while several children, including her daughter and H., were imitating TV wrestling. This had occurred in the sight of several adults present at the time. She stated that she had seen H. grab her daughter and lift her over his head. She stated that her daughter was hurt during this play, had cried at the time, and that she subsequently complained of pain in the vaginal area a few days afterward. She stated that "it wasn't until the state

¹ H. is now twenty years old. He recently moved out of his parent's home. Thus, it is possible, whatever the outcome of this matter, that this obstacle to the petitioners obtaining a day care home registration has been removed.

got involved" that she heard her daughter had reportedly alleged that H. took her pants down.

15. The girl's mother stated that she does not believe anything sexual took place between H. and her daughter. She did not contact H.'s family for several years after the incident but reestablished a friendship with them in 1995. Her daughter and H. have been together several times since then and no problems have occurred.

16. H., who is now twenty, also testified at the hearing. He remembers the incident as one in which the girl in question was injured while he and other kids were doing "body slams". He remembers that he had picked her up over his head holding her by the crotch and shoulders, and that she had cried. He denies that he was ever alone with the girl or that he ever touched her sexually.

17. The petitioners, H.'s parents, testified that shortly after the incident they had move to another address nearby, but that the New Hampshire police had been in contact with them at their new address, and that it could easily have been obtained by SRS. They stated that until they recently moved to Vermont and applied for a day care home registration they had never received any notice from SRS or anyone else that the incident had been substantiated as one of sexual abuse.

ORDER

The petitioners' request to expunge the report of sexual abuse by H. is granted.

REASONS

The Department of Social and Rehabilitation Services is required by statute to investigate reports of child abuse and to maintain a registry of all investigations unless the reported facts are "unsubstantiated". 33 V.S.A. §§ 4914, 4915 and 4916.

The statute further provides:

A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him or her on the grounds that it is not substantiated or not other-wise expunged in accordance with this section. The board shall hold a fair hearing under section 3091 of Title 3 on the application at which hearing the burden shall be on the Commissioner to establish that the record shall not be expunged.

33 V.S.A. § 4916(h)

In order to sustain its burden of proof in these matters, SRS is required to show that the registry report is based upon accurate and reliable information that would lead a reasonable person to believe that a child is abused . . ." See 33 V.S.A. § 4912(10).

33 V.S.A. § 4912(8) provides, in pertinent part:

"Sexual abuse" consists of any act by any person involving

sexual molestation or exploitation of a child including but not limited to incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. . .

In this case, by failing to record or otherwise contemporaneously memorialize its interviews with the alleged victim, and by failing to notify the family of the alleged perpetrator of its findings, SRS has left the Board with an insufficient basis, eight years later, to uphold its decision. Accordingly, the report in question shall be expunged from the SRS registry as unsubstantiated.

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